IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

CRL.A.No. 760 of 2006(A)

SC.195/2005 of ADDL.SESSIONS COURT (ADHOC)-I, KOTTAYAM
CP.36/2005 of JUDL. MAGISTRATE OF FIRST CLASS, CHANGANACHERRY

.....

APPELLANT/ACCUSED:

AJESH ANTONY, C.NO.48,
CENTRAL PRISON, TRIVANDRUM-12.

BY ADV. ADV.GEORGE SEBASTION(STATE BRIEF)

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTORSRI. C.M. NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO.760 OF 2006

Dated this the 11th day of December, 2006

JUDGMENT

The appellant is the accused in Sessions Case No.195 of 2005 on the file of the Additional Sessions Court (Adhoc)-I, Kottayam. He faced trial for the offences punishable under Sections 294(b), 354 and 308 I.P.C.

2. The prosecution case against the appellant was that on 17.2.2005 at about 8.30 A.M. while PW.1 and her husband were walking along the road, the appellant uttered obscene words against PW.1 and caught hold of her hand and pulled her towards him and when PW.1 resisted, the appellant pelted a stone at her which hit on her nose and thereby she sustained injuries. To prove the case against the appellant, the prosecution examined PWs.1 to 6 and produced Exts.P1 to P5. Exts.D1and D2 were marked on the side of the defence, but no witnesses were examined. On closing the prosecution evidence, the appellant was questioned under Section 313 Cr.P.C. and he denied having committed the offences as alleged by the prosecution. According to the appellant, while he was standing in the workshop where he was employed as watchman, PW.1 and

her husband PW.2 came to collect scrap materials from the workshop and when he prevented them, PW.2 threw a stone at him. The trial court, however, relying on the evidence adduced by the prosecution, found the appellant guilty of the offences alleged against him, convicted him thereunder and sentenced him to pay a fine of Rs.500/- and in default of payment of fine, to undergo rigorous imprisonment for one month for the offence under Section 294(b) I.P.C. He was also sentenced to pay a fine of Rs.1000/- and in default of payment of fine to undergo rigorous imprisonment for two months for the offence under Section 354 I.P.C. and to undergo rigorous imprisonment for three years and to pay a fine of Rs.1500/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of three months for the offence under Section 308 I.P.C. The sentences were ordered to run concurrently. The appellant was also given the benefit of Section 428 Cr.P.C. The trial court further ordered that if the fine amount was collected, Rs.1,500/- shall be paid to PW.1 under Section 357(1)Cr.P.C. The above conviction and sentences are challenged in this appeal.

3. This appeal is filed through the jail authorities. Since the appellant is not defended by a counsel of his choice, a State Brief has been appointed to defend his case. This Court heard the learned counsel

appearing for the appellant as well as the learned Public Prosecutor.

4. Learned counsel appearing for the appellant submits that the trial court went wrong in placing reliance on the evidence of the prosecution witnesses to find the appellant guilty of the offences alleged against him as the witnesses were interested witnesses and their evidence was not corroborated by the evidence of any independent witness. Counsel further submits that the evidence of PWs.1 and 2 is contradictory. The prosecution relied on the evidence of PWs.1 to 4. PWs.3 and 4 are the doctors who examined PW.1 after the alleged incident.

5. PW.1 stated before the court below that when she along with her husband and two children came in front of the workshop situated near Municipal stadium, the appellant came and caught hold of her hand and used abusive words and when she pushed him away the appellant took a stone and threw it at her and the stone hit on her nose causing injuries. She further stated that she became unconscious and was taken to Taluk Hospital, Changanacherry and from there to Medical College Hospital, Kottayam. PW.2, the husband of PW.1 also supported the evidence of PW.1. But he had no case that PW.1 became unconscious. Such an evidence is absent even in Ext.P1 First Information Statement. Further,

even though it is clear from Ext.P1 that PWs.1 and 2 knew the appellant even prior to the incident, the name and address of the appellant were not given while PW.1 was examined by PW.3. The specific case of the appellant when he was questioned under Section 313 Cr.P.C. was that while he was standing in front of the workshop where he was employed as watchman, PWs.1 and 2 tried to collect scrap materials from the workshop and when he resisted, PW.2 threw a stone at him.

6. It is to be noted that the incident took place at about 8.30 A.M., but no witnesses other than PWs.1 and 2 were questioned by the police regarding the incident. PWs.5 and 6 have not given any explanation as to why no independent witnesses were questioned. The evidence of PW.1 would show that she cried aloud when the stone hit on her nose. This itself would have attracted the attention of independent witnesses. That apart, the investigation conducted by the officers was also not proper. It is seen that only PW.6 who conducted part of the investigation and PW.5 who filed the charge sheet were examined, but the Head Constable who recorded Ext.P1 statement was not examined. Coming to the medical evidence, PW.3, the doctor of Taluk Hospital, Changanacherry who examined PW.1 stated that she had noted only abrasion and tenderness on nasal bone. With regard to the nature of the injury, PW.3 stated that the

injuries were minor in nature. PW.4 who examined PW.1 at Medical College Hospital, Kottayam deposed that the injuries noted by her could have been caused due to fall and that the injuries were not likely to cause death.

7. Considering the entire facts and circumstances of the case, this Court is of the view that the evidence adduced by the prosecution is not sufficient to prove any case against the appellant. In the above circumstances, this Court is of the view that the prosecution has failed to prove the case against the appellant beyond reasonable doubt. Accordingly, the conviction and sentence passed against the appellant - accused in Sessions Case No.195 of 2005 on the file of the Additional Sessions Court (Adhoc)-I, Kottayam are set aside and the appellant is acquitted. The appellant shall be released forthwith, if he is not wanted in connection with any other case.

The Crl. Appeal is allowed as above.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A.NO.760/2006

JUDGMENT

11TH DECEMBER, 2006